

JAN 25 2013

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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION

BRUCE DWAYNE BARNES,

) CASE NO. 7:13CV00029

Petitioner,

)
)

MEMORANDUM OPINION

v.

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DIRECTOR, VIRGINIA
DEPARTMENT OF CORRECTIONS,
Respondent.

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By: Glen E. Conrad
Chief United States District Judge

Bruce Dwayne Barnes, a Virginia inmate proceeding pro se, filed this petition for a writ of habeas corpus, pursuant to 28 U.S.C. § 2254, challenging the December 2008 judgment of the Circuit Court of Scott County under which he stands convicted of contributing to the delinquency of a minor, possession of morphine, and possession of oxycodone. The court finds that the petition must be summarily dismissed as successive, pursuant to 28 U.S.C. § 2244(b).¹

Barnes' petition indicates, and court records verify, that Barnes previously filed a § 2254 petition concerning the same convictions, and the court addressed and dismissed that petition upon finding that Barnes' claims of court error were procedurally barred. See Barnes v. Warden, Case No. 7:10CV00544, 2011 WL 1428088 (W.D. Va. Apr. 13, 2010) (granting respondent's motion to dismiss). Thus, Barnes's current petition, which raises claims that counsel provided ineffective assistance during the criminal trial proceedings, is a subsequent petition, falling under the prohibition in 28 U.S.C. § 2244(b) against a second or successive petition.

Under § 2244(b), a federal district court may consider a second or successive § 2254 petition only if petitioner secures specific certification from the United States Court of Appeals

¹ Under Rule 4(b) of the Rules Governing § 2254 Cases, the court may summarily dismiss a § 2254 petition “[i]f it plainly appears from the petition and any attached exhibits that the petitioner is not entitled to relief in the district court.”

for the Fourth Circuit that the claims in the petition meet certain criteria. § 2244(b)(3). Because Barnes does not demonstrate that he has obtained such certification by the Court of Appeals, the court will dismiss the petition without prejudice as successive. An appropriate order will enter this day.

The Clerk is directed to send copies of this memorandum opinion and accompanying order to petitioner.

ENTER: This 25th day of January, 2013.

John C. Coughenour

Chief United States District Judge